SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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RE: State of Delaware v. Deon A. Carney
ID # 0510023059A

Submitted: February 22, 2007
Decided: April 24, 2007

On Defendant's Motion to Strike Death Penalty.
DENIED.

Dear Counsel:

Before the Court is Defendant's motion to strike death penalty. Defendant is scheduled to go to trial on September 5, 2007 on the charges of Murder First Degree, Possession of a Firearm During the Commission of a

Felony and Conspiracy First Degree.[1] The State is seeking the death penalty and intends to rely on Defendant's previous 1996 conviction for Assault First Degree as the statutory aggravator pursuant to 11 *Del. C.* § 4209(e)(1)(i).[2]

Defendant argues that because he was sixteen when he committed the Assault First Degree offense, this conviction cannot be used to enhance his sentence. Defendant relies on the Supreme Court's decision in *Roper v. Simmons*,[3] which precludes capital punishment of juvenile offenders under eighteen. In that decision, the Court reasoned that juveniles, generally, are less culpable for their actions than adults.[4] Therefore, Defendant claims that the "diminished culpability of Defendant as a juvenile for the conduct constituting the offense of Assault First Degree in 1996 makes the Defendant's eligibility for the death penalty cruel and unusual."[5]

The State contends, however, that while *Roper* prohibits the imposition of the death penalty on juveniles, the case "says nothing regarding the adequacy of penological justifications for the death penalty when an adult defendant is potentially subjected to the death penalty by virtue of a prior violent felony conviction committed when under the age of eighteen."[6] Therefore, the State claims that Defendant's Assault First Degree conviction can be used as a statutory aggravator.

While there are apparently no Delaware cases on point, other jurisdictions that have considered this issue after *Roper* have held that juvenile convictions can still qualify as predicate offenses for sentence enhancement. For example, the Eleventh Circuit has held that "[o]ur conclusion that youthful offender convictions can qualify as predicate offenses for sentence enhancement purposes remains valid because *Roper*

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[1] A separate trial on the severed charge of Possession of a Deadly Weapon by a Person Prohibited is theoretically scheduled for October 16, 2007.

[2] At the time this motion was filed, this was the only statutory aggravator upon which the State intended to rely. The State has since indicated that it will also rely on the "substantial planning" aggravator pursuant to 11 *Del. C.* § 4209(e)(1)(u). Although Defendant objected, the Court has decided in an opinion issued simultaneously to this one, that the State may also potentially rely on the "substantial planning" aggravating factor. *State v. Carney*, Del. Super., ID No. 0510023059A, Cooch, J. (April 24, 2007) (granting the State's request to rely on the "substantial planning" statutory aggravator).

[3] 543 U.S. 551 (2005).

[4] *Id*. at 571 ("Once the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults.").

[5] Def. Mot. to Strike Death Penalty at ¶ 8.

[6] State Resp. to Def. Motion to Strike Death Penalty at ¶ 7.

does not deal specifically-or even tangentially-with sentence enhancement."[7] Similarly, the Florida Supreme Court has recently explained that *Roper* "provided a bright line rule for the imposition of the death penalty itself, but nowhere did the Supreme Court extend this rule to prohibit the use of prior felonies committed when the defendant was a minor as an aggravating circumstance during the penalty phase."[8]

This Court agrees with the other courts that have ruled on this issue. The fact that Defendant was sixteen at the time he committed the First Degree Assault offense does not preclude this offense from enhancing his sentence for the First Degree Murder charge. Furthermore, the Court is not aware of any court holding to the contrary.[9] For the above reasons, Defendant's motion to strike death penalty is **DENIED**.

IT IS SO ORDERED.

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[7] *United States v. Wilks*, 464 F.3d 1240, 1243 (11th Cir. 2006), *cert denied*, 127 S.Ct. 693 (2006). *See also U.S. v. Glover*, 2006 WL 642573, at *1 (N.D. Ill.) (holding that Roper was "inapposite" where defendant alleged that he could not be sentenced as a career offender because his prior crimes were committed while he was a juvenile because Roper involved punishment for crimes committed as a juvenile, not the defendant's "decision *as an adult* to continue his life of crime"), *aff'd*, 2007 WL 756934 (7th Cir.).

[8] *England v. State*, 940 So.2d 389, 407 (Fla. 2006). *See also Melton v. State*, 2006 WL 3455072 (Fla.) (following *England* and holding that *Roper* does not preclude reliance upon criminal acts committed before the age of eighteen from serving as a basis for the imposition of the death penalty).

[9] Defendant has cited no post-*Roper* cases to support his contention and the Court has found none.